offence different from that in the original charge, under the same or different section of the Ordinance, which is not the case here, see e.g. *Public Prosecutor* v. *Lee Chwee Kiok,*[4] the headnotes of which reads as follows:

"The accused was originally charged with trafficking in dangerous drugs on July 21, 1976 at TBG 1306 Jalan Harper, Kelang under section 39B(1)(a) of the Dangerous Drugs Ordinance. On November 25, 1976 the Public Prosecutor issued his written consent to prosecute under section 39B(3) of the said Ordinance. At the trial, on September 19, 1977, the learned Deputy Public Prosecutor amended the charge in two respects: The offence was alleged to have been committed at TBG 1306A, Jalan Harper, Kelang and the offence alleged was that of doing an act preparatory to trafficking under section 39B(1)(c) of the Dangerous Drugs Ordinance. No consent of the Public Prosecutor had been obtained on the amended charge.

Held, acquitting and discharging the accused: (1) the trial was a nullity as the Public Prosecutor had not given his consent on the amended charge;

(2) the facts as found in this case did not support either charge."

Even if a fresh consent of the Public Prosecutor is necessary to prosecute the accused on the altered charge, I consider that, on the authority of *Perumal* v. *Public Prosecutor, supra,* the prosecution of the accused by a Deputy Public Prosecutor in this court from the outset constitutes such a consent. In *Perumal's* case, one of the questions of law reserved for the decision of the Federal Court was: "(3) If no adequate consent is available and no Deputy Public Prosecutor is present at the time when an accused person is required to plead to an offence under the Prevention of Corruption Act and/or a prescribed offence, would the presence of the Deputy Public Prosecutor as prosecutor at the hearing of the said charges against the accused on a subsequent date be deemed to be sufficient consent for institution of prosecution with the meaning of section 26?" As earlier observed, the terms of section 26 of the 1961 Act are identical to those in section 9 of Ordinance 22 of 1970. In its judgment (at page 268, letters E to H, right-hand column), the Federal Court said:

"...where the Public Prosecutor or his deputy prosecutes from the inception under the provisions of the Act there is necessarily an implied consent to the prosecution, but where he does not do so and yet the accused is called upon to plead, consent by the Public Prosecutor given subsequently does not validate the institution of the prosecution unless the court is satisfied that he or a colleague has in fact given consent prior to the moment of plea.

Section 26 does not say that the consent must be in writing. So it may be in writing or oral. Indeed in *Public Prosecutor* v. *Oie Hee Koi*[5] and associated appeals Lord Hodson giving the advice of the Privy Council said that the Public Prosecutor's consent is implicit if he is himself the prosecutor. Lord Hodson said at page 154:

'It was further argued that under section 80 of the (Internal Security) Act the consent of the Public Prosecutor to the prosecution should have been and was not obtained. The answer to this objection is that the Public Prosecutor was himself the prosecutor and his consent is implicit in his action. The provision in section 80 requiring consent is applicable where prosecutions take place... and the Public Prosecutor is not the actual prosecutor."

The second and third points raised by learned counsel for the accused are therefore rejected.

As to the first point, Ordinance 22 of 1970 lays down no provision relating to alteration of charges. Such a matter therefore falls to be governed by the relevant provisions of the Criminal Procedure Code, that is, those contained in sections 158 to 163 of the Criminal Procedure Code. The alteration to the original charge was made under section 158, and in the circumstances, that section clearly empowers and authorises the court to do so, and I hold that it is within the jurisdiction of the court to do so. Hence, I find that there is no merit in this point. I have also considered the article entitled "The Power to Prosecute" by Professor Ganville Williams (1955) Criminal Law Review pages 596, 668.

For the reasons given, therefore, I rule that a fresh consent of the Public Prosecutor is unnecessary before the accused is called upon to plead to the altered charge and to be further tried thereon.

Ruled accordingly.

Solicitors: *Rayner & Co.*

ABDULLAH BIN MAMAT & ANOR. v. PENGARAH HUTAN NEGERI TRENGGANU & ANOR.

[O.C.J. (Salleh Abas F.J.) August 25 & September 14, 1981]
[Kuala Trengganu — Civil Suit No. 46 of 1980]

Forestry — Licences to collect and cut timber — Application for licence approved — Expenses incurred for fees and in clearing area — Approval subsequently revoked — Claim for damages — Equitable estoppel.

Equity — Equitable estoppel — Application for logging licence — Approval subsequently revoked — Claim for expenses incurred.

The plaintiffs had applied for a logging licence to cut the timber on state land. The application was approved and the plaintiffs paid the fees and also spent money to clear the boundaries of the approved area. Subsequently the approval was revoked. The plaintiffs claimed the sum of $21,700.00 which they had expended as a result of the approval and a further sum of $150,000.00 being the estimate of loss of profit which they would have gained but for the cancellation of the approval.

Held: (1) the licence required for the collection and removal of timber is a requirement of the law and not really a matter of free choice by both parties as a contract is. The application for the licence and its approval could not be held to have created contractual rights and obligations between the applicant and the licensing authority;

(2) where an applicant for a licence had expended money on the strength of a letter conveying approval of his application for a licence, the licensing authority is not free to refuse to issue the licence or to terminate the approval without compensating the loss incurred by the applicant;

(3) the plaintiffs were therefore entitled to recover the sum of $21,700.00 which they had expended because of the approval;

(4) there was no basis either in fact or law for their claim for loss of profit, since there was no evidence that they lost any profit and also since the case was not one of breach of contract.

Case referred to:-

(1) *Mok Deng Chee* v. *Yap See Hoi & Ors.* [1981] 2 M.L.J. 321.

CIVIL SUIT.

Wan Muttalib for the plaintiff.

Haji Abdul Kadir Sulaiman, Legal Adviser, for the defendant.

Salleh Abas F.J.: I had already given my decision in this case but in order to explain the basis of my decision the following judgment is hereby written. First, the facts which are as follows.

In reply to the plaintiff's application for a logging licence to cut timber on state land at Paya Durian Pahit Merchang, on October 2, 1978 the defendant No. (1), the State Forest Officer wrote a letter to the plaintiffs stating that their application was approved and that the approved area was altogether 800 acres and that the licence to be issued was a Form I licence. This letter also asked the plaintiffs to make payment of certain fees amounting to $3025 within two weeks and thereafter to get in touch with the relevant District Forest Officer for the issue of the licence.

The plaintiffs promptly paid the required fees — payment was made on October 7, 1978. Relying upon the above said letter they spent a further sum of $18,675 for booking a bulldozer and a tractor and for labour charges for clearing the boundaries of the approved area. Then suddenly the plaintiffs received a letter dated January 16, 1979 from the defendant No. (1) stating that the approval was revoked as the area concerned would be given to the public by a tender system and that the plaintiffs were then invited to make their bids. The plaintiffs did not participate in the tender, and instead consulted their solicitor who then wrote a letter to the defendants demanding payment of compensation of a sum of $171,700. This amount comprised a sum of $21,700 which the plaintiffs had already expended as a result of the approval and another sum of $150,000 being the plaintiffs' estimate of loss of profit which they would have gained but for the cancellation of the approval.

When their demand was ignored the plaintiffs sued the defendant for wrongfully cancelling the approval.

At the trial the facts were not seriously disputed, as all were based on documents. All payments which the plaintiffs had made were fully borne out by receipts Exhibits P3A, B, C, D and P4A, B and C. There was, however, some dispute as to whether the plaintiffs paid PW2 Mohd Nor bin Mohamed a sum of $2,675 shown in P4A as labour charges for clearing the boundaries in view of the fact that the plaintiffs had already paid to the State Forest Department a sum of $800 shown in P3C for the same purpose. I have seen PW2 and heard his explanations regarding this sum and I found no reason to disbelieve him. I therefore accepted his evidence and held that the sum in question was actually incurred by the plaintiffs.

As regards the timber contents of the approved area, there was however a serious dispute. The first plaintiff (PW1) swore that he estimated the area to contain between 2500 and 3000 tons of valuable timber. On the other hand, DW2 the forest ranger who processed the plaintiff's application and visited the area testified that at the most the area contained about 300 tons of timber. He produced his report dated March 20, 1978 (Exhibit D8) which was prepared for submission to his superior officer with his recommendation that the area be approved to the plaintiffs. Paragraph 7 of the report said that on the whole the valuable timber which could be produced from this area was estimated to be in the region of 300 to 400 tons. The plaintiffs, however, relied upon Exhibit P7, a letter dated February 24, 1978 written by the defendant No. (1) to the plaintiffs' solicitors. Between these two witnesses, I prefer to accept the evidence of DW2, as he has been in the service of the forest department for about 30 years and had visited the area and written a report D8 on it. I see no reason to suspect the falsehood of his report, although he admitted that he did not visit the area tree by tree. It is a matter of common sense that no officer for that matter would cover the area inch by inch when visiting it.

So much for the issue of facts. Now I turn to the legal issue. The learned legal adviser who appeared for the defendants submitted that the plaintiffs had no cause to claim the compensation because until the licence to extract timber was issued, there was no contract existing between the plaintiffs and the defendants, and so the latter was then at liberty to terminate the approval which he had given earlier. With respect I am unable to accept the submission. It is completely a misconception of law to regard the approval of the logging area and the issue of a logging licence as being based on a contract. The learned counsel for the plaintiffs was also under the same delusion, when he submitted in reply to the contention of the learned State Legal Advisor to the effect that by virtue of the approval a contract was already concluded between the plaintiffs and the defendants.

It must be reminded that constitutionally, forestry and forests are state matters in the same way as land, and are thus governed by the relevant state forest enactment. In so far as Trengganu is concerned, the law regulating forestry and forests is the Forest Enactment No. 44 of 1356 passed on November 3, 1937 and the Forest Rules 1356. Under this legislation, no one can cut collect or remove any timber except under and in accordance with the conditions of a licence. There are three types of logging licences. The first type referred to as Form I licence is an authority "to take forest produce on ledge account." The second type is a licence to take a fixed quantity of forest produce on pre-payments of royalty. This is known as Form II. The third type of licence is referred to as Form III and this licence authorises its holder to take forest produce other than timber on payment of a monthly fee. In practice a Form I licence is invariably issued. Indeed the licence to be issued to the plaintiffs was Form I licence.

Anyone who takes forest produce without a licence or contrary to a condition of the licence is guilty of an offence punishable under section 28 of the Enactment. The licence is thus the requirement of the law and not really a matter of free choice by both parties as a contract is. When the plaintiffs were applying for a logging area, they were in fact applying for a licence to take away available timber in the area applied for, and when the defendant No. (1) wrote a letter stating that the application was approved he was in fact informing the plaintiffs that a Form I licence to carry out logging in the applied area had been approved in principle and that the requisite licence would be issued to them as a matter of course after they had paid all the required fees and contacting the relevant District Forest Officer. In my view under

no circumstances the application for the licence and its approval could be held to have created contractual rights and obligations between the applicant and the licensing authority.

In this case in so far as the plaintiffs' claim was based on contract it must fail, but their statement of claim did not so specify and was wide enough to cover whatever right or interest created by the grant or intended grant of a licence. Paragraph 7 of their amended statement of claim said:

"On or about January 18, 1979, the defendants wrongfully and in breach of the said approval cancelled the said approval as per letter Bil. 2(2) dlm. PANT 34 5."

This paragraph is wide enough to cover other grounds as well. It is clear that the plaintiffs had spent $21,700 because of the approval. The subsequent cancellation of the approval had wasted all these expenses and justice demands that compensation should be given therefor. The case therefore falls squarely within the principle of equity arising out of the expenditure of money commonly referred to as equitable estoppel. This principle was fully discussed in the Federal Court's Judgment delivered by me in *Mok Deng Chee* v. *Yap See Hoi & Ors.*[1] For the purpose of the present case it is sufficient for me to say that where an applicant for a licence had expended money on the strength of a letter conveying approval of his application for a licence, the licensing authority is not free to refuse to issue the licence or to terminate the approval without compensating the loss incurred by the applicant. That being the case, I hold that the plaintiffs were entitled to recover the sum of $21,700 which they had expended because of the approval. But as regards their claim for loss of profit, there was absolutely no basis either in fact or in law, since there was no evidence that they lost any profit and also since the case was not one of breach of contract. Hence I dismissed their claim for loss of profit amounting to $150,000.

Finally I entered the judgment for the plaintiffs in the sum of $21,700 only and costs.

Order accordingly.

HENG YEOW HUA v. TAN YEW LAI & SONS SDN. BHD.

[A.C.J. (Hashim Yeop A. Sani J.) October 16, 1981]
[Kuala Lumpur — Civil Appeal No. 60 of 1980]

Contract — Sale and purchase agreement relating to land — Dispute over interest overdue — Claim by appellant for vacant possession — Relief granted by President of Sessions Court — Whether order amounted to rescission.

Jurisdiction — Sessions Court — Immovable property — Whether Sessions Court can hear suit for recovery of immovable property.

The plaintiff claimed against the defendant for vacant possession and mesne profits as from the date of the purported termination of the agreement. The plaintiff was a housing developer and the agreement between the parties was admittedly a sale agreement in respect of a house and described as such in the agreement itself. The said agreement was entered into in February 1975. Purchase price of the house was $39,500. It was completed in March 1976 and possession was given to the appellant also in March 1976. The sessions court found that 35 instalments were made for the period between May 29, 1976 to September 22, 1978. There was protracted correspondence between the parties over the disputed interest overdue. When finally no payment was made on the sums overdue, the plaintiff sent a letter terminating the agreement to the defendant, giving him notice to quit on or before February 28, 1979.

The defendant appealed against the learned President's decision. The Memorandum of Appeal raised the following questions of law for the appellate court:—

(1) Did the Order of the learned President amount to a rescission order?

(2) Was the respondent duplicating his claims in that having elected to charge interest for late payments according to the agreement and having received and taken interest over the years could he then ask for an alternative remedy contradictory to his election?

(3) Was there an infringement of any provisions of the National Land Code and the Moneylenders' Ordinance 1951?

(4) Did the Sessions Court have jurisdiction to hear the suit as the appellant alleged that an issue of title was involved?

Held, dismissing the appeal: (1) as regards question (1), the relief granted by the President was the main relief asked for in the Statement of Claim. It was not an order for rescission and could not be construed as such;

(2) as regards question (2) the principle that a party may not approbate and reprobate has no application on the facts of the case;

(3) as regards question (3) nowhere was this argument raised during the hearing before the learned President nor was it stated anywhere in the pleadings; the court would therefore not consider this point at all;

(4) as regards question (4), a Sessions Court can hear and determine any action or suit for recovery of immovable property so long as the title to the property is not in issue;

(5) there was no reason to interfere with the order of the learned President;

Cases referred to:-

(1) *Hiew Kim Swee* v. *G.C. Gomez* [1955] M.L.J. 170, 172.

(2) *Ali Mat bin Khamis* v. *Jamaliah binti Kassim* [1974] 1 M.L.J. 18.

CIVIL APPEAL.

J.G. Bernatt for the applicant.

Jennifer Chong (Miss) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J. (delivering oral judgment): The plaintiff (respondent now) was claiming for vacant possession and mesne profits as from the date of the purported termination of the agreement (P1). The plaintiff was a housing developer and the agreement between the parties was admittedly a sale agreement in respect of a house and described as such in the agreement itself. The learned President saw it clearly as an agreement for the sale of house No. 297, Taman Dato Tan Yew Lai, Kuala Lumpur. In fact from their pleadings the parties themselves throughout treated the agreement as such and the terms and conditions of sale of the house was as agreed upon by the plaintiff and the defendant.

The agreement was entered into in February 1975. Purchase price agreed to was $39,500. The house was completed in March 1976 and possession given to appellant presumably also in March 1976. Apparently payments were made for about 2 years but not as